



US Army Corps
of Engineers
St Paul District

Public Notice

ISSUED: September 27, 2001
EXPIRES: October 31, 2001
SECTION: 404-Clean Water Act

REFER TO: GP/LOP-98-MN-MMW

PROPOSED NEW REGIONAL PROGRAMMATIC GENERAL PERMIT GP-02-MN REVIEW AND PROPOSED MODIFICATION OF GP/LOP-98-MN

1. PURPOSE OF THIS PUBLIC NOTICE.

On January 31, 2000, the St. Paul District replaced all Corps Section 404 nationwide permits in Minnesota with a combination of new Section 404 regional general permits and letter-of-permission evaluation procedures (GP/LOP-98-MN, hereinafter termed the GP/LOP). The District indicated that it would conduct a public/interagency review of GP/LOP after it had been in effect for a year. This public notice initiates the review and requests comments on the performance and potential modification of the GP/LOP.

In addition, to further reduce regulatory duplication between state and Federal regulatory programs and as a potential alternative to state assumption of the Federal Section 404 program, the Minnesota Board of Water and Soil Resources (BWSR) has requested the District to consider issuing a new programmatic general permit (GP-02-MN) to replace certain provisions of the GP/LOP. GP-02 would be similar to GP-01-MN that has been in effect in Minnesota since 1985. GP-01-MN provides abbreviated Corps review procedures for certain activities that are regulated and approved by the Minnesota Department of Natural Resources (MDNR). Similarly, GP-02-MN would apply to certain activities that are regulated and approved under the Minnesota Wetland Conservation Act (WCA). The proposed GP-02 permit is attached, and this public notice requests comments on its implementation to replace LOP C of the GP/LOP.

2. GP/LOP INFORMATION.

The GP/LOP permit presently in effect is posted on the District's web site at: www.mvp.usace.army.mil/regulatory/ under "GP/LOP-98 Permits." Individual projects proposed for authorization under the GP/LOP have been posted on the web page under "GP/LOP-98 Project Notices" for public/interagency review and comment since the GP/LOP was issued. The District implemented the GP/LOP as an environmentally and administratively preferable alternative to the use of Corps Section 404 nationwide permits in Minnesota. The GP/LOP

was designed to be simpler and easier for the public to understand and comply with than heavily conditioned, complicated Section 404 nationwide permits. The GP/LOP was also intended to streamline the Section 404 program for permit applicants by eliminating the need for applicants to obtain both a Section 404 authorization from the Corps and a project-specific State Section 401 water quality certification from the Minnesota Pollution Control Agency for many minor activities. The District believes that the GP/LOP has effectively accomplished these objectives and that it has also increased environmental protection in comparison to continued use of Section 404 nationwide permits in Minnesota.

The District Regulatory Analysis and Management System (RAMS) database indicates that during the one-year period ending April 1, 2001, the GP/LOP authorized a total of 1,068 Section 404 projects. These consisted of 441 letters of permission and 627 general permits, as follows:

GP/LOP-98-MN DATA FOR THE ONE-YEAR PERIOD ENDING APRIL 1, 2001

<u>PERMIT TYPE</u>	<u># PROJECTS</u>	<u>IMPACT</u>	<u>COMPENSATORY MITIGATION</u>
GP	627	46	24
LOP A	16	4	3
LOP B	336	83	92
LOP C	34	15	18
LOP D	55	75	76
	<u>1,068</u>	<u>223 acres</u>	<u>213 acres</u>

It should be noted that the GP numbers above may be low because GP activities do not require reporting to the Corps. However, the District believes it is likely that most project proponents do report GP projects in order to receive a confirmation letter as documentation that their projects are authorized and to avoid potential violations of Federal law. It should also be noted that the data may contain errors or omissions and that impact and compensatory mitigation acreage data should be viewed as estimates. Some prescribed data-entry procedures used during part of the period did not effectively distinguish between beneficial and adverse impacts; therefore, the above data may reflect the worst case from the environmental perspective.

The complete list of 1,068 GP/LOP actions in Minnesota for the above period is available on the District web page. This 46-page list includes project location by county and project and mitigation impacts. It may be viewed or downloaded as a PDF file and is listed

among the STANDARD INDIVIDUAL PERMIT PUBLIC NOTICES for Minnesota at: www.mvp.usace.army.mil/regulatory/. The filename is GLPMNDATA.

As noted above, this public notice invites comments on the performance and potential modification of the GP/LOP. Based on experience with the GP/LOP since its implementation on January 31, 2000, the District proposes to continue the GP/LOP without substantial modifications, except for the potential replacement of LOP C with GP-02, until its expiration on January 31, 2005.

Associated with this GP/LOP review the District clarifies that while excavation, by itself, in wetlands and discharges in wetlands outside the Corps jurisdiction do not trigger the Corps Section 404 permit requirements, those impacts are included in calculating the GP/LOP impact limits of projects that involve other activities that do require a Section 404 permit. It should be noted that certain wetland areas are no longer regulated under Section 404 of the Clean Water Act as a result of the U.S. Supreme Court's January 9, 2001, decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*. The SWANCC decision held that Section 404 of the Clean Water Act does not apply to isolated, non-navigable, wholly intrastate waters, where the only connection between the water body and interstate commerce was the use of the water as habitat for migratory birds.

2. THE GP-02-MN PROPOSAL.

As noted above, the District is considering issuing GP-02 and deleting the LOP C provisions of the GP/LOP. GP-02 would be a programmatic general permit similar in coverage to LOP C. However, the Corps review would be conducted concurrent with, instead of after, the WCA review of proposed projects. Deleting LOP C from the GP/LOP would shorten and simplify the GP/LOP, while GP-02 would provide more consistent administration of the Corps' Section 404 program for many of the projects that are regulated under both state and Federal authority. GP-02 would provide the public with a familiar mechanism that is similar to that of GP-01-MN, a programmatic general permit based on MDNR authority that has been in effect since 1985. In addition, GP-02 would recognize and increase consistency with recent changes in state MDNR and WCA programs. GP-02 is also considered to be a potential alternative to state assumption of the Federal Section 404 program as a way to reduce regulatory duplication between Federal and state programs and reduce costs and delays for the regulated public. GP-02 may also facilitate further, future reduction of state-Federal regulatory duplication, such as the implementation of a WCA exemption for projects that are regulated by the Corps under standard individual permit procedures.

Similar to LOP C, GP-02 would have a two-acre wetland/water impact limit. As noted above, this limit would include any water/wetland areas not regulated under the Corps' Section 404 authority. All GP-02 projects having total wetland impacts exceeding 10,000 square feet would be posted on the Corps' web site for a 30-day public/interagency review.

This proposal would not affect the non-reporting GP and LOP A provisions of the existing GP/LOP. The District would retain LOP B in its present form for use in evaluating eligible projects that are regulated by the Corps but not regulated under the WCA. GP-02 would not be used for public road projects, which would continue to be evaluated under LOP D. GP-02 would not apply to any areas, including privately-owned land, within the exterior boundaries of any Indian Reservation.

District authorization under GP-02 would involve finding that the proposed activity complies with the Clean Water Act Section 404(b)(1) guidelines (including compensatory mitigation requirements), is not contrary to the public interest, and is not in conflict with Federal endangered species or cultural resources regulations or the Federal trust responsibility to Indian Tribes. A copy of the proposed GP-02 is attached.

4. REPLIES/COMMENTS.

Interested parties are invited to submit to this office written comments, facts, arguments, suggestions or objections on or before the expiration date of this public notice. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served. Replies may be addressed to District Engineer, St. Paul District, Corps of Engineers, Army Corps of Engineers Centre, 190 Fifth Street East, St. Paul, MN 55101-1638, ATTN: CO-R-MMW. Questions may be directed to Mr. Michael Weburg at the above address, or telephone (651) 290-5367.

After review of comments received, the District may conduct further coordination or proceed to take action to revise the GP/LOP and/or issue GP-02-MN, as appropriate. District actions will be announced in a future public notice.

5. STATE WATER QUALITY CERTIFICATION.

GP-02 cannot be issued without state certification or waiver under Section 401 of the Clean Water Act. The Section 401 certifying agency for Minnesota is the Minnesota Pollution Control Agency (MPCA). This

public notice is intended by the St. Paul District to serve as its application to the MPCA for Section 401 certification of GP-02-MN and the proposed modification of GP/LOP-98-MN. In accordance with Corps regulations at 33 CFR 325.2b.1.ii., waiver of this certification will be deemed to occur if the certifying agency fails or refuses to act on this request for certification within sixty days after the issuance date of this public notice. Comments concerning state Section 401 certification may be sent during this public notice period to: Minnesota Pollution Control Agency, Metro District, Attention 401 Certification, 520 Lafayette Road, St. Paul, MN 55155-4194. MPCA certification staff may be contacted at telephone (651) 297-8219.

6. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS.

This proposal is being coordinated with the U.S. Fish and Wildlife Service (FWS). Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the proposal. Draft Corps-FWS coordination procedures concerning endangered species have been developed during interagency coordination and will be finalized before a final decision is made on GP/LOP-98-MN.

7. HISTORICAL/ARCHAEOLOGICAL.

This public notice is being sent to the National Park Service, Tribal Governments, the State Archaeologist, and the State Historic Preservation Officer to determine if there are known cultural resources which may be affected by the proposal. Unknown archaeological, scientific, or historical data could be lost or destroyed by work authorized by Section 404 GPs or LOPs.

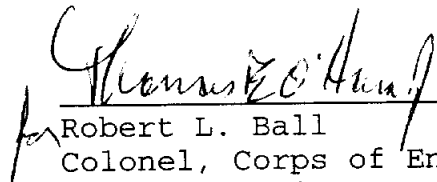
8. REGULATORY AUTHORITY.

This proposal will be reviewed according to the provisions of Section 404 of the Clean Water Act. Our public interest review will include consideration of the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

9. PUBLIC INTEREST REVIEW.

The decision on the proposed actions will be based on an evaluation of the probable impact, including cumulative impacts, of the proposal on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue must be balanced against reasonably foreseeable detriments. All relevant factors will be considered, including economics and the environment and, in general, the needs and welfare of the people. Pertinent documents will be available for review in the St. Paul District Office. The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes and other

interested parties in order to consider and evaluate the impacts of this proposal. Comments received will be considered to determine whether to issue, modify, condition, or abandon this proposal. Comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and public interest factors listed above. Comments may be used in the preparation of environmental documents pursuant to the National Environmental Policy Act. Comments are also used to determine the overall public interest of the proposed action.


for Robert L. Ball
Colonel, Corps of Engineers
District Engineer

Permittee The General Public in Minnesota

Permit No. GP-02-MN [AS PROPOSED]

Issuing Office St. Paul District
 U.S. Army Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

After receipt of a general permit confirmation letter from the St. Paul District and upon compliance with all terms and conditions of this general permit, the general public in the State of Minnesota is authorized to perform work as specified below.

Project Description: This general permit provides authorization under Section 404 of the Clean Water Act (33 USC 1344) for the public in the State of Minnesota to perform certain work that is regulated and approved under the Minnesota Wetlands Conservation Act (WCA). This GP is further limited to work that is part of a single and complete project and that would result in filling, draining, excavating or inundating less than 2.0 acres of wetland/water area. **This general permit is subject to all of the following provisions, exclusions and conditions.**

Project Location: Waters of the U.S. in the State of Minnesota that are regulated under the WCA, **except as excluded below.**

SEE HOW TO APPLY FOR AUTHORIZATION UNDER THIS PERMIT, BELOW.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends upon expiration of the WCA authorization/approval for the work. This general permit expires on **December 31, 2003**, unless sooner revoked, reissued, or modified.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit and Minnesota Wetland Conservation Act requirements for the activity. You are not relieved of this requirement if you abandon the permitted activity.
3. If you discover any previously unknown historic or archaeological

remains while accomplishing the activity authorized by this permit, you must immediately stop work and notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places

4. If a conditioned state water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

Refer to following pages for special conditions and exclusions applicable to this permit.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that authorization under this permit is not contrary to the public interest was made in reliance on the information provided by applicants.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative

order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXCLUDED ACTIVITIES: The following activities are NOT eligible for authorization under GP-02-MN. The St. Paul District will notify GP-02-MN applicants within the 45-day period noted below in HOW TO APPLY FOR AUTHORIZATION UNDER THIS GENERAL PERMIT if it determines that any of these exclusions apply to their proposal.

1. Projects that would impact more than a total of 2 acres of wetland by filling, drainage, excavation, or inundation. GP-02-MN is limited to single and complete projects that would impact not more than 2 acres of wetland/water area, including any wetland/water areas that are not subject to the Corps' Section 404 jurisdiction.
2. Activities not regulated under WCA, unless such activities are part of a single and complete project that includes other activities that are regulated under WCA.
3. Activities that the St. Paul District determines would not comply with the Section 404(b)(1) guidelines and/or would be contrary to the public interest. The guidelines require that adverse impacts to water/wetland areas be first avoided, next minimized, and then compensated for, in that order and to the maximum extent practical.
4. Activities in Navigable Waters of the U.S. (the Federal "Section 10" waters).
5. Activities in a calcareous fen or in wetlands adjacent to and within 300 feet of a calcareous fen as officially designated by the state.
6. Activities in Federally-designated Wild and Scenic Rivers.
7. Activities that the St. Paul District of the Corps of Engineers determines warrant additional Federal evaluation to address the government's trust responsibility to American Indian Tribes.
8. Activities that the St. Paul District of the Corps of Engineers determines have potential to cause

unacceptable adverse impacts on aquatic resources of national importance.

9. Activities that would have an adverse effect on a known archaeological site or Federally-listed endangered or threatened wildlife or plants, or their critical habitat. This exclusion shall not apply if the effect has been resolved so that the proposal is in conformance with the appropriate provisions of the Federal cultural resources or endangered species regulations.
10. This permit does not apply to any area, regardless of ownership, that is within the exterior boundaries of Indian Reservations.
11. Any activity that the St. Paul District determines does not comply with one or more of the GP-02-MN SPECIAL CONDITIONS on the following pages of this permit.
12. Activities ineligible for authorization under GP-02-MN solely because water quality certification under Section 401 of the Clean Water Act has not been granted or waived, or solely because the activity fails to comply with a conditional Section 401 certification of GP-02-MN will be considered by the Corps of Engineers to be denied without prejudice unless and until the applicant obtains a project-specific Section 401 certification or waiver from the certifying agency.

HOW TO APPLY FOR AUTHORIZATION UNDER THIS GENERAL PERMIT:

To receive authorization under this general permit, the applicant must submit an application for a WCA replacement plan to the appropriate official administering the WCA for the project area in accordance with state application procedures and a copy of the full application and any supporting materials to the St. Paul District.

DISTRICT GP-02-MN PROCEDURES:

Upon receipt of an application, the District will determine if the proposed work is eligible for authorization under this general permit and send the applicant a letter confirming its findings. If this confirmation letter states that the proposed work is eligible for GP-02-MN, the procedures below will be used.

If no SPECIAL WATERS would be impacted (see below) and project total wetland impacts are 10,000 square feet or less the GP-02 authorization will be effective immediately upon the applicant's

receipt of the District's confirmation letter or upon WCA authorization of the project, whichever is later.

If SPECIAL WATERS would be impacted are involved (see below) and project total wetland impacts exceed 400 square feet, OR if project total wetland impacts exceed 10,000 square feet, the Corps will send its confirmation letter and at about the same time post a public notification including a description of the project on its Internet web site to provide a 30-day public/interagency review and comment period. **For these projects the GP-02 authorization will become valid 45 days after the date of the confirmation letter or upon receipt of the WCA authorization, whichever is later, unless the Corps notifies the applicant within this 45-day period that authorization under the general permit is denied or must be held in abeyance pending further coordination or evaluation.**

SPECIAL WATERS are state-designated trout waters, state-designated Outstanding Resource Value Waters, state-protected lakes/wetlands greater than 10 acres in size as designated by the MDNR "Public Waters/wetlands Inventory" maps, and water/wetland areas that are adjacent to and within 300 feet of these waters.

ADDITIONAL INFORMATION AND PROVISIONS

The Corps GP review will include a determination concerning compliance of the project with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. Projects found not to comply with either Act will not be authorized under the GP or any other Corps permit authorization unless and until actions are taken so that compliance with both Acts is assured.

The Corps GP review will include identifying and considering potential project impacts on 100-year floodplains, impaired waters listed on state EPA TMDL Program 303(d) lists and adjacent wetlands, and resources such as wild rice that have been identified as resources of special concern to Federally-recognized Indian tribes.

The District will issue a GP confirmation letter for those projects found to be in compliance with all terms and conditions of GP/LOP-98-MN and the Section 404(b)(1) guidelines, provided the District determines the proposed work is not contrary to the public interest. The District will do the level of analysis required to determine whether or not the proposal meets the authorization criteria. Projects that fail to meet GP criteria will be evaluated under other Corps procedures.

This GP does not apply to any project that is wholly exempt from MWCA regulation. However, this GP may be combined with other GPs or

permits to authorize project activities in wetlands that are not regulated under the MWCA provided that the project's total wetland impacts do not exceed the 2.0-acre project impact limit.

The District evaluation will identify any need for special conditions to minimize adverse project impacts and/or protect the public interest. Such conditions will be specified in the GP confirmation letter.

GP/LOP-98-MN does not affect the Corps responsibility to insure that permit authorizations comply with Section 7 of the Federal Endangered Species Act and Section 106 of the National Historic Preservation Act. No Corps GP will be granted for projects found not to comply with these Acts.

The Corps retains discretionary authority to require an individual permit review of any activity eligible for authorization under GP/LOP-98-MN based on concern for the aquatic environment or for any other factor of the public interest.

For purposes of GP-02-MN, the term, "single and complete project" means the total project proposed by the project proponent. For example, if construction of a residential development or linear project such as a road or utility line affects several different areas of waters of the U.S., the cumulative total of all filled areas is the basis for deciding the project's total wetland/water impact. For "phased" developments, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed.

GP-02-MN SPECIAL CONDITIONS

1. In addition to these special conditions, some GP-02-MN authorizations may also be subject to project-specific special conditions which, if applicable, will be specified in the District's GP-02 confirmation letter for the project.
2. All work must satisfy all terms and conditions of the WCA authorization/replacement plan.
3. No activity that is denied WCA authorization/replacement plan approval is authorized by this general permit.
4. Discharges of dredged or fill material into waters of the United States **must be minimized or avoided to the maximum extent practicable**, unless the District approves a compensation plan that the District determines is more beneficial to the environment than minimization or avoidance measures.

5. All work or discharges to a watercourse, particularly from hydraulic dredging, must meet applicable Federal, State, and local water quality and effluent standards on a continuing basis.

6. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, flooding, or any other means.

7. If dredged or excavated material is placed on an upland disposal site (above the ordinary high-water mark) the site must be securely diked or contained by some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to placement of any fill material.

8. Upon completion of earthwork operations all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover to prevent subsequent erosion.

9. All fill (including riprap) must consist of suitable material free from toxic pollutants in other than trace quantities. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.,) and material discharged must be free from toxic pollutants in toxic amounts (reference Section 307 of the Clean Water Act).

10. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the District in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places. In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened to obtain material, the State

Historic Preservation Officer (SHPO) must be notified prior to disturbing the earth at the new site. Evidence of this consultation with the SHPO must be forwarded to the St. Paul district Office by the permittee.

If cultural, archaeological or historical resources are unearthed during activities authorized by this permit, work must cease immediately and the St. Paul District must be contacted for further instruction.

11. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

12. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date. Work should be done in accordance with state-approved, published practices, such as defined in Minnesota Pollution Control Agency Document, PROTECTING WATER QUALITY IN URBAN AREAS - BEST MANAGEMENT PRACTICES FOR MINNESOTA.

13. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

14. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Authorization of an activity under GP-02-MN does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages on the Internet. If it becomes apparent that a Federally listed endangered plant or animal species

will be affected by work authorized by this permit, work must be stopped immediately and the St. Paul District of the Corps of Engineers must be contacted for further instruction.

15. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

16. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

17. No activity may cause more than a minimal adverse effect on navigation.

18. No activity or its operation may impinge or abrogate reserved treaty rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

19. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

20. An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

21. A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Duty Officer at 1-800-422-0798 and the U.S. Coast Guard at telephone number (1-800) 424-8802.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

DRAFT - PROPOSED

(DISTRICT ENGINEER SIGNATURE)

Colonel, Corps of Engineers
District Engineer

(DATE)